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No. 901

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1940

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN, individually and as President of the said Union PADDY SULLIVAN, individually and as an officer of the said Union, and HYMAN BERNSTEIN, individually and as business agent of said Union, all of 265 West 14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:
EDWARD C. MAGUIRE,
SAMUEL J. COHEN.

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BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN, individually and as President of the said Union PADDY SULLIVAN, individually and as an officer of the said Union, and HYMAN BERNSTEIN, individually and as business agent of said Union, all of 265 West 14th Street, New York City,

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HYMAN WOHL and LOUIS PLATZMAN,

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, an unincorporated association, and Peter Sullivan, individually and as President of the said Union, and Paddy Sullivan, individually and as an officer of said Union, and Hyman Bernstein, individually and as business agent of said Union, and the petition of each of them, respectfully show unto this Honorable Court:

I. Summary Statement of Issues Involved

A. The facts out of which the action arose.

This case arises out of a labor dispute in the baking industry in New York City.

The disputants involved are the defendant Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, a labor Union affiliated with the American Federation of Labor, and the plaintiffs Hyman Wohl and Louis Platzman, who are engaged in the occupation of peddling bakery products.

The defendant Union conducted admittedly peaceful and orderly picketing for the purpose of protesting against what it believed to be the economic and social evils of the peddler system.

Specifically, the defendant requested that the plaintiff peddlers, who worked seven days each week without respite, each hire a member of the defendant Union as a relief driver for Sundays.

The placards which were used by the defendant Union were as follows:

> "HYMAN WOHL
>
> A BAKERY ROUTE DRIVER WORKS SEVEN DAYS A WEEK WE ASK EMPLOYMENT FOR A UNION RELIEF MAN FOR ONE DAY HELP US SPREAD EMPLOYMENT & MAINTAIN A UNION WAGE HOUR AND CONDITION.
>
> BAKERY & PASTRY DRIVERS & HELPERS
> LOCAL 802 I. B. of T. affiliated
> with A. F. L." (R. 57).

These placards, as appears from the full quotation thereof above, were directed to the attention of the public and merely stated the contention of the Union.

Admittedly, there was no misrepresentation or fraud practiced by the Union by the use of these placards, nor was it claimed by the plaintiffs that there was any misrepresentation or fraud practiced in any other manner (R. 55).

The only picketing which took place occurred at two wholesale bakeries where the plaintiffs had their headquarters and obtained the products which they distributed. These two bakeries were known as Diamond Baking Co., Inc., and Bernstein & Dickerman. The entire picketing in question was extremely brief in duration, and lasted in all about two hours on each of two days (R. 57).

Apart from such picketing the only labor activity in which the defendant Union engaged in reference to this dispute consisted of requesting about five of the retail dealers, who purchased the products peddled by the plaintiffs, not to deal with the plaintiffs, and likewise requesting the two bakery firms above mentioned not to distribute baking products through such peddlers. There was never any picketing of these retail dealers or bakers.

The Peddler System

Briefly, the peddler system, against which the defendant Union protested, was an arrangement whereby wholesale bakers contrived to effect distribution of their bakery products without technically engaging any distribution employees. The peddler furnished the substitute for the orthodox employee. He was invested with the role of independent entrepreneur, purportedly purchasing from the wholesale baker and selling at a profit to the retail dealer. The economic relationship between wholesale baker and peddler, despite the outward change, remained substantially one of dominance by the baker and subservience on the part of the peddler.

The economic status of the plaintiff peddlers, as shown upon the trial, may be considered typical. The plaintiff Wohl had a gross income of approximately $32 per week and the plaintiff Platzman a gross income of approximately $35 per week, out of which income the plaintiffs were required to pay the maintenance and operation costs of the trucks used by them for peddling, and out of which they were also obliged to carry outstanding credits on their routes (R. 56).

During the five years preceding the dispute in question there was a strong trend in the baking industry in the City of New York to dissolve existing employment relations and, in lieu thereof, to deal through peddlers. After the enactment of the Social Security and Unemployment Insurance laws the number of peddlers in New York City rose from 50 to more than 500 in the baking industry alone (R. 50, 51).

During the 18-month period immediately preceding the dispute at least 150 drivers were discharged and required to sever connections with the firms by whom they had been employed unless they undertook to become peddlers (R. 51).

The picketing in question was undertaken in order to prevent the further spread of this evil, and the inevitable deterioration of established Union standards consequent upon the extension thereof (R. 52, 53, 54). After consideration of the menace of the peddler system, the Union entered upon a program calling for the unionization of the peddlers, who were to be admitted to membership, if they were willing to become members of the Union, upon the same terms and pursuant to the same regulations which were applicable to other Union members (R. 52). Picketing was employed by the Union in the controversy in question in support of the program of unionization of peddlers undertaken to protect the Union from further inroads of the peddler system.

It was uncontrovertibly established upon the trial that the peddlers were not covered by social security, unemployment insurance or workmen's compensation insurance (R. 53), that they did not carry public liability or property damage insurance on the trucks which they operated (R. 53, 54) and that they did not conform to any uniform standard of wages or hours, but worked seven days each week (R. 56).

The trucks operated by the plaintiffs were registered in their wives' names (R. 55, 56).

Both of the plaintiff peddlers, Hyman Wohl and Louis Platzman, had previously applied for membership in the defendant Union, and Platzman had become a member but was delinquent in the payment of his duties (R. 52, 53, 149-151).

All of the foregoing matters of fact were definitely found by the Trial Court and we may properly designate them as undisputed facts.

B. The nature of the action.

The present action was commenced by the plaintiffs aforesaid for the purpose of obtaining injunctive relief against the above-mentioned activities of the defendant Union.

After finding the aforesaid facts the Trial Court rendered judgment in favor of the plaintiffs, absolutely enjoining the picketing in question. The injunction is blanket in form, attempting no separation of legal from allegedly illegal acts.

In its written opinion the Trial Court stated:

> "* * * I am constrained to grant the injunction prayed for against all picketing by the defendant Union" (R. 180).

The conclusions of law found by the Trial Court include the following:

> "2. That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor" (R. 59).
>
> "3. That the plaintiffs are entitled to a judgment and decree of this Court permanently restraining and enjoining the defendants, the members of the defendant Union, their servants, agents and employees, and all other persons acting in conjunction with them from picketing the plaintiffs and the places of business of the manufacturing bakers who sell to them and of the

customers who buy from them, and in any other way that may prevent the plaintiffs from peacefully and harmlessly conducting their business" (R. 60).

The injunction issued by the Trial Court enjoins the defendants:

"(a) From picketing the places of business of manufacturing bakers who sell to the plaintiffs or either of them because of the fact that said manufacturing bakers sell to these plaintiffs; and

(b) From picketing the places of business of customers of these plaintiffs because such customers purchase baker products from these plaintiffs; * * *" (R. 62).

There having been no claim of picketing upon private property in this case, it is apparent that the injunction is not designed to prevent trespass, but is definitely directed against picketing in public places. The decision of the Trial Court expressly found that the picketing was "in the vicinity of the place of business of Diamond Baking Co. Inc.," and "in the vicinity of the place of business of Bernstein & Dickerman" (R. 57, 58).

Obviously the injunction of all labor activities, peaceful or otherwise, is based upon the single erroneous proposition that picketing, whether peaceful or violent, orderly or disorderly, is not permissible in the absence of an employment relationship between the parties. This is clearly shown by the findings of the Trial Court which, as we have already noted, remained undisturbed upon appeal. The Trial Court found:

"That the aforementioned placards were truthful in all respects, and contained no misstatements or misrepresentations" (R. 58).

And:

"That the picketing so conducted aforementioned was done in a peaceful and orderly manner, without violence or threat thereof and in no respect was it or did it create disorder" (R. 58).

And on these facts the Trial Court concluded:

> "That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a Union or by the defendants who seek to compel them to employ Union labor" (R. 59).

Upon appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, the judgment below was affirmed by a divided Court, the majority writing no opinion. The dissenting opinion of Mr. Justice Callahan, in which Mr. Justice Dore concurred, held that whether or not the controversy in question be deemed a statutory labor dispute, the conduct of the defendants was lawful and should not have been enjoined (R. 189, 190).

Upon appeal to the Court of Appeals the judgment below was unanimously affirmed without opinion. The judgment of affirmance of the Court of Appeals was entered on December 31, 1940.

II. Jurisdiction of This Court

The judgment here in question is a final judgment, rendered after trial of the action, absolutely and permanently enjoining the peaceful and orderly labor activities of the defendant Union.

The judgment has been affirmed by the Court of Appeals of the State of New York, the highest Court of that State in which a decision could be had.

The defendant Union and the individual defendants urged upon the New York State Courts their contention that the said final judgment violated their privileges and immunities under the Federal Constitution, in that they were restrained from the exercise of their rights of freedom of speech and assembly. This contention was overruled, and the absolute injunction of the Trial Court was not modified in any respect.

A substantial Federal question was thus presented, and this Court clearly has jurisdiction to issue a writ of certiorari to the Court of Appeals of the State of New York, pursuant to Section 237-b of the Judicial Code of the United States (28 U. S. C., Sec. 344-b).

III. Questions Presented

Stated in concise form, the questions here presented are as follows:

1) May a State Court absolutely enjoin admittedly peaceful and orderly picketing by a legitimate labor organization, merely because that picketing is not directed against an employer of members of the Union?

2) Assuming that the previous question must be answered in the negative, should an exception to the rule be established because in this case the Union was protesting against the peddler system rather than against the labor practices of a specific employer?

In the discussion of the reasons for the allowance of the writ sought by the petitioner, immediately following, we shall consider in detail the foregoing questions.

IV. Reasons for Allowance of Writ

The absolute injunction issued by the New York State Supreme Court against the petitioners violates the guarantees of freedom of speech and assembly provided in the Federal Constitution.

> Constitution of the United States, Amendment XIV, Section 1.

The dissemination of information concerning the facts of a labor dispute has definitely been held to be within the area of free discussion which is guaranteed by the Constitution, whether the mode of dissemination employed involves the use of the spoken word or the carrying of banners or placards in the course of activity commonly known as picketing.

Senn v. *Tile Layers Union,* 301 U. S. 468.
Hague v. *C. I. O.,* 307 U. S. 496.
Schneider v. *State,* 308 U. S. 147.
Thornhill v. *Alabama,* 310 U. S. 88.
Carlson v. *California,* 310 U. S. 106.
Milk Wagon Drivers Union v. *Lake Valley Farm Products,* 311 U. S. 91.
Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.* (No. 1, October Term, 1940).
American Federation of Labor v. *Swing* (No. 56, October Term, 1940).

Whether or not the present controversy, as a matter of New York State law, ought properly to be designated as a statutory labor dispute, within the meaning of Section 876-a of the Civil Practice Act of New York, is not material here, and we are not concerned with the decision reached by the State Courts in that respect, for the decision of that question does not affect the existence of the Federal question here at issue.

It has been definitely held by this Court that "members of a Union might, without the special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution".

Senn v. *Tile Layers Union,* 301 U. S. 468, 478.

The picketing here in question consisted of nothing more than the dissemination of the Union's contentions with respect to the evils of the peddler system, and such

expression of opinion was entitled to the protection of the constitutional guarantee. If, in any respect, the activity of the Union exceeded the bounds of the area of free discussion and penetrated the area of coercion or violence, an injunction directly solely against the excesses of conduct, might properly have been issued, but unless the entire program of activity was permeated by violence or illegality, an injunction absolute in form was unauthorized.

> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.* (No. 1, October Term, 1940).

This Court has recently stated in unequivocal language that the mere absence of the employment relation between the parties furnishes no authority for the issuance of an injunction by a State Court forbidding peaceful persuasion and peaceful picketing.

> *American Federation of Labor* v. *Swing* (No. 56, October Term, 1940).

The injunction granted by the Supreme Court of the State of New York in the case at bar was in direct contradiction of the principles clearly stated by this Court in the *Swing* case.

National Importance of the Questions at Issue

As is evidenced by *Milk Wagon Drivers Union* v. *Lake Valley Farm Products* and *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, which have recently come before this Court, and as is also evidenced by the case at bar, and others which have arisen during the last few years, a great number of employers throughout the country have, since the enactment of comparatively recent legislation for the benefit of employees, including the Social Security Act and Unemployment Insurance laws, endeavored to dissolve the orthodox employment relationship wherever possible. The

form of the substituted relationship, whether it be called a "vendor system" or a "peddler system", has usually been such as to make it possible for the employer to label the erstwhile employee as an independent entrepreneur.

The creation and extension of this new economic relationship definitely opposes the aims of the established labor organizations of this country. In the vast economic area in which vendors or peddlers may, conveniently for employers, be set up, the existing Unions will necessarily decline as the vendors and peddlers increase. The two systems, as presently constituted, cannot coexist. The peddler, insulated by the honorific title of independent entrepeneur, acknowledges no uniform standards of wages or hours. The Union, on the other hand, as the very basis of its existence, advocates a standard of wages and hours related to social necessities. If the various State Courts are permitted to establish rules whereby Unions may not in self-defense publicly protest against the assault to which they are now being subjected, the industrial field which peddlers and vendors will shortly occupy will unquestionably be immense. The interests of industry and of labor cut across State lines, and decisions in one State affect labor relations in other States. This Court is not asked to pass upon the merits of the controversy. It is asked, however, to preserve the fundamental civil rights of both groups of contestants. We have pointed out the vast scale upon which the conflict is about to be carried on as indicative of the urgency of the establishment by this Court of fair rules of conflict, so that the evolution of new industrial forms in this country may proceed within the framework of the Constitution.

WHEREFORE, your petitioners and each of them respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals of the State of New York demanding that Court to certify and send to this Court for review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the case, entitled on its docket *Hyman Wohl and Louis Platzman* v. *Bakery and Pastry Drivers and Helpers Local 802 et al.*, and that the order and judgment of the said Court of Appeals may be reversed, and that your petitioners may have such other and further relief as may be just and proper.

BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802
of the International Brotherhood of Teamsters,

PETER SULLIVAN,
individually and as President of said Union,

PADDY SULLIVAN,
individually and as an officer of said Union,

HYMAN BERNSTEIN,
individually and as business agent of said Union,

Petitioners,

By EDWARD C. MAGUIRE,
Attorney for Petitioners.

EDWARD C. MAGUIRE,
SAMUEL J. COHEN,
of Counsel.